SUPREME COURT, U. S.

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1971

No. 71-1087

FRANK J. REAM, *Petitioner*

v.

THE STATE OF OHIO, *Respondent*

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE THIRD APPELLATE JUDICIAL DISTRICT OF THE STATE OF OHIO

BRIEF FOR RESPONDENT IN OPPOSITION

RICHARD J. RINEBOLT,
Prosecuting Attorney
Hancock County, Ohio
First National Bank Bldg.,
Findlay, Ohio 45840

Counsel for Respondent
State of Ohio

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The order and memorandum opinion of the Court of Common Pleas quashing the indictment in the Appendix herein at p. App. 7. The order of the Court of Appeals is printed in the Appendix hereto at p. App. 11, and the memorandum opinion at pp. App. 12 et seq. infra. An application for leave to appeal to the Supreme Court of Ohio was overruled by that Court on November 26, 1971, Appendix, p. App. 21. The Appeal was dismissed on the same date. Appendix, p. App. 22.

JURISDICTION

Petitioner's jurisdictional statement is not disputed by Respondent.

QUESTIONS PRESENTED

I.

Whether or not it is a valid exercise of the police power for the State of Ohio to regulate medical licensing by requiring a chiropractor, licensed in another State, to either submit to an examination or present evidence of the completion of two years of collegiate work before being granted a license to practice chiropractic in Ohio?

II.

Whether or not petitioner was deprived of due process and equal protection under the Constitution by not being afforded a preliminary hearing?

III.

Whether or not sufficient evidence existed for the arrest and indictment of petitioner?

IV.

Whether or not an Appellate Court may allow a defendant to appear and defend in the Appellate Court a Trial Judge's ruling in defendant's favor that is appealed by the State?

V.

Whether or not Sec. 4731.01 of the Ohio Revised Code is an unconstitutional enactment in that the Ohio State Medical Board is composed only of medical doctors and osteopaths?

QUESTION PRESENTED

Whether or not it is a valid exercise of the police power for the State of Ohio to regulate medical licensing by requiring a chiropractor, licensed in another State, to either submit to an examination or present evidence of the completion of two years of collegiate work before being granted a license to practice chiropractic in Ohio.

STATUTES INVOLVED

The pertinent Ohio statutes are contained in Chapter 4731 of the Ohio Revised Code and are set forth in the Appendix to this brief.

ARGUMENT

At the outset it must be made clear that the laws of the State of Ohio do not prohibit the practice of chiropractic. What the laws of Ohio do prohibit is the practice of chiropractic by persons, such as petitioner, who are not licensed in the State of Ohio. The constitutional questions presented by this case are not new or unique; they have all been answered previously by this Court. All questions have been answered contrary to petitioner's position and in favor of the State of Ohio.

Simply stated, what petitioner would like this Court to do is reverse all the prior cases it has decided concerning the police power of a State to regulate medical licensing and rule that the State of Ohio must allow *any* practitioner recognized in another State to practice in Ohio without obtaining a license. Every issue concerning medical licensing (except the issue of fines) present in this case was present in the case of *State v. Rosenkrans*, 30 R.I. 374, 75 Atl. 491 (1910), affirmed *per curiam*, without opinion, 225 U.S. 698, 56 L. Ed. 1263 (1911). In *Rosenkrans*, supra, the defendant, even though licensed to practice dentistry in two other States, was not licensed in Rhode Island and was convicted for practicing without a license. The defendant contended that by not recognizing his licenses from the other States Rhode Island violated his constitutional right because Rhode Island was not giving "full faith and credit" to the public acts of another State. The Rhode Island Supreme

Court, after some discussion, ruled against the defendant stating, at page 500, very succinctly:

> "No state has such extraterritorial jurisdiction that it can by its certificate confer upon the person named therein the right to practice his profession in another state."

Other prior cases decided by this Court have made it abundantly clear that a State may set reasonable standards by way of educational requirements and examinations for the determination of the qualifications of those who hold themselves out to the public as practitioners of any form of treatment for a physical condition. One of the first cases decided by this Court concerning medical licensing was *Dent v. State of West Virginia*, 129 U.S. 114, 32 L. Ed. 623 (1889) wherein this Court set forth the guidelines which have been the basis of all subsequent cases in this area of the law. In *Dent*, supra, this Court stated at page 121 of the U.S. report:

> "It is undoubtedly the right of every citizen to follow any lawful calling, business or profession he may choose, subject only to such restictions as are imposed upon all persons of like age, sex and condition . . . . But there is no arbitrary deprivation of such right where its exercise is not permitted because of a failure to comply with conditions imposed by the State for the protection of society. . . . The nature and extent of the qualifications required must depend primarily upon the judgment of the State as to their necessity. If they are appropriate to the calling or profession, and obtainable by reasonable study or application, no objection to their validity can be raised because of their stringency or difficulty."

Pursuant to the right of a State to impose restrictions upon limited practitioners of medicine, the General Assembly of Ohio has enacted Chapter 4731 of the Ohio Revised Code, entitled "Physicians, Limited Practitioners." Covered within this chapter are the requirements necessary for obtaining a license to practice chiropractic in Ohio, both as to residents and non-residents.

The petitioner also challenges the requirements which the General Assembly has set for the granting of licenses. Section 4731.15 of the Ohio Revised Code states specifically:

> "The state medical board shall also examine and register persons to practice any limited branch of medicine or surgery. . . . Such limited branches of medicine or surgery shall include chiropractic. . . . (Emphasis added.)

Two cases previously decided by this Court, *Reetz v. Michigan*, 188 U.S. 505, 47 L. Ed. 563 (1903) and *Douglas v. Noble*, 261 U.S. 165, 67 L. Ed. 590 (1923), have established that the delegation of power to determine fitness for practice to a board of examiners was not in conflict with the Federal Constitution.

Petitioner also tries to raise a constitutional challenge based on discrimination between residents and non-residents. First we fail to see how petitioner has standing to raise such an issue since he is a resident of Ohio. Secondly, as we shall point out later, there is absolutely no distinction made in the Ohio licensing statutes between residents and nonresidents. This second issue does not in fact exist.

To obtain a license to practice in Ohio petitioner has two alternatives, either taken an examination or present his license from another State along with evidence of two years of general college work and a high school diploma.

Section 4731.16 of the Ohio Revised Code clearly sets forth what shall be contained in the examination conducted by the State Medical Board:

> ". . . Such examination shall be given in anatomy, physiology, chemistry, bacteriology, pathology, hygiene, diagnosis, and in such other subjects appropriate to the limited branches of medicine or surgery. . . . "

This Court, in the case of *Collins v. Texas*, 223 U.S. 288, 56 L. Ed. 439 (1912), has previously upheld the requirement of testing on scientific subjects, even though the applicant did not prescribe drugs. See also *McNaughton v. Johnson*, 242 U.S. 344, 61 L. Ed. 352 (1917).

Section 4731.19 of the Ohio Revised Code states that the State Medical Board shall determine the standing of schools, colleges, institutions or individuals giving instruction in limited branches of medicine. The power of an examining board to determine the standing of a school from which an applicant has graduated has been upheld by this Court in *Graves v. Minnesota*, 272 U.S. 425, 71 L. Ed. 331 (1926).

Moreover, in order to be fair to applicants for licensure to practice one of the limited branches of medicine, including chiropractic, Section 4731.17 of the Ohio Revised Code provides that:

> ". . . the state medical board shall call to its aid any person of established reputation and known ability in the particular limited branch in which the examination is being held;"

Thus, the State of Ohio has established a very clear and simple procedure for being licensed as a chiropractor in Ohio; the applicant presents a diploma from a chiropractic school, approved by the State Medical Board, and takes an examination. It's as simple as that. There is *never* any mention or distinction, made between residents and non-residents in the statutes setting forth the requirements to take the examination. Both residents of Ohio and nonresidents are eligible to take an examination to practice chiropractic in Ohio. If an applicant passes the examination, he pays $25.00 and receives a certificate allowing him to practice chiropractic in Ohio.

In addition, the State of Ohio permits another alternative method of obtaining a certificate to practice chiropractic. Section 4731.18 of the Ohio Revised Code allows a license to be granted based upon reciprocity if certain conditions are met. Section 4731.18 of the Ohio Revised Code states:

> "The state medical board may dispense with the examination of applicants for limited certificates to to practice a limited branch of medicine or surgery . . . as . . . provided in section 4731.29 of the Revised Code. . . . "

Section 4731.29 of the Ohio Revised Code states that if a holder of a medical license in another State wishes to move to Ohio

the medical board may, in its descretion, issue him a license without examination if he meets the requirements set forth in Section 4731.09 of the Revised Code. Section 4731.09 of the Ohio Revised Code sets the minimum educational requirement at two years of collegiate work in addition to high school graduation. Thus to obtain a license by reciprocity, the applicant must be a graduate of an approved school, licensed in another State and have two years of college.

The educational requirements deemed necessary by the Ohio General Assembly for the granting of licenses by reciprocity are very minimal. They are in fact much lower than those of other States which have been upheld by this Court as reasonable. For instance, Louisiana's requirement of a medical school diploma to practice chiropractic has long been upheld by this Court, *Louisiana State Board of Medical Examiners v. Fife*, 126 La. 681, 111 So. 58 (1926), affirmed 274 U.S. 270, 71 L. Ed. 1324. More recently this Court has again considered a long series of cases from Louisiana raising the same provisions contested in *Fife*, supra. In doing so this Court again affirmed the lower court decisions upholding the constitutionality of the Louisiana licensing provisions. See *England v. Louisiana Board of Medical Examiners*, 246 F. Supp. 993 (1965), affirmed 384 U.S. 885, 16 L. Ed. 2d 998 (1966), reh. den. 384 U.S. 890 (1966).

Thus, the Ohio statutes make no distinction between a resident and a nonresident for obtaining a license by reciprocity. The words "resident" and "nonresident" are never mentioned in the Ohio licensing statutes. The claim of discrimination between resident and nonresident which petitioner has raised simply are unsupported.

The Ohio licensing statutes for chiropractors offer applicants *two* alternative methods for being licensed. An applicant may either present a diploma from an approved school and pass an examination *or* he may offer proof that he has previously been licensed in another State, and has graduated from an approved school giving instruction in chiropractic and is a high school graduate with two years of collegiate work in an approved college of arts and sciences. However, petitioner

did not comply with either of these licensing provisions and did not obtain a license from the State of Ohio to practice chiropractic. He is charged with practicing without a license and cannot be heard to complain about the Ohio statutes relating to reciprocity. Reciprocity in licensing is strictly a matter of legislative policy and not a constitutional right.

Lastly, the petitioner's alleged distinction between residents and nonresidents does not exist. The *only* distinction made in the licensing statutes is licensing by *examination* and licensing by *reciprocity*. There is no distinction made between residents and nonresidents in either of the two methods available for licensing. Petitioner has clearly *misstated* the meaning and intent of the Ohio licensing statutes. The most recent Ohio court decision concerning the medical licensing statutes, as applied to chiropractors, is the trial court's decision in *O'Dell v. Medical Board*, 22 Ohio Misc. 138, 259 N.E. 2d 167 (Com. Pleas, 1970). In *O'Dell*, the trial court set forth the same interpretation of the Ohio licensing statutes as we have in this brief. Petitioner's interpretation of the statutes are his own and are not supported by any court or administrative decision.

QUESTION PRESENTED

Whether or not petitioner was deprived of due process and equal protection under the Constitution by not being afforded a preliminary hearing.

STATUTES INVOLVED

The pertinent Ohio statutes are contained in Chapter 2937 of the Ohio Revised Code and are set forth in the Appendix to this brief.

ARGUMENT

Respondent submits that Sec. 2937.10 of the Ohio Revised Code does not confer upon an individual charged with a felony a mandatory right to a preliminary hearing.

This statute was interpreted by the courts of Ohio in *State v. McClellan*, 217 N.E. 2d 230, 6 Ohio App. 2d 155, 35 O.O. (2d) 318, motion for leave to appeal (40370) to the Ohio Supreme Court overruled, November 2, 1966, cert. den. 87 S. Ct. 1380, 386 U.S. 1022, 18 L. Ed. 2d 462 (1966). The Defendant in this case was arrested January 12. 1965, on a charge of murder in the first degree. He was called before the Municipal Court of Toledo for a preliminary hearing, where the case was continued over the Defendan'ts objedtion to January 22, 1965. On January 19, 1965, an indictment was returned by the Grand Jury of Lucas County, charging the Defendant with first degree murder. The preliminary hearing was thereupon dismissed over Defendant's objection. The Court of Appeals held that:

> "The claim of the defendant that he has a constitutional right to a preliminary hearing in a court having committing jurisdiction is without foundation. There is no such constitutional limitation on the power of a grand jury to return an indictment against a person, where it finds there is credible evidence to support a finding that there is probable cause to believe that such person is guilty of a criminal act committed within the county."

The Respondent submits that the above case is fully applicable to the present situation, the only difference being in the degree of the felony and the possible punishment.

The Respondent asserts also that the denial of a preliminary hearing was not prejudicial to the rights of petitioner in that the Grand Jury serves as a safeguard to prevent any infringement upon a Defendant's rights, be they constitutional or statutory.

QUESTION PRESENTED

Whether or not sufficient evidence existed for the arrest and indictment of petitioner.

ARGUMENT

Respondent submits that the issues of improper arrest and improper search and seizure are untimely in that petitioner has not exhausted his remedies available in the courts of Ohio.

In regards to petitioner's allegations concerning an improper search and seizure, Respondent submits that this allegation is totally without merit. There is no evidence in the record of any "search and seizure" ever being made by the Respondent or anyone connected with the office of the Prosecuting Attorney. Furthermore, if such a search and seizure had been made, the proper remedy for petitioner to have pursued would be that of a motion to suppress the evidence, and there is no evidence in the record of any such motion ever having been made.

Respondent further asserts that Petitioner's allegation that the warrant for arrest was not based on "probable cause" is also untimely in that he has made no motions in the trial court which would require an adjudication of this issue. Petitioner alleges that since he was not afforded a preliminary hearing that he has been deprived of the right to raise this issue, the Respondent submits that this is not the case. Matters concerning the existence or non-existence of the "probable cause" necessary for a search warrant or arrest may be raised by motion any time after an accused has been indicted. The record in the present case is barren, however, of any such motion ever having been raised by the petitioner. Respondent submits that since our judicial system is based on the theory of an "adversary proceeding," it would be unjust for this Honorable Court to rule on this issue at this time, since it would deprive the Respondent of its right to call witnesses and introduce other evidence negating petitioner's allegations.

Respondent further submits that the returning of an indictment by the Grand Jury that is regular upon its face establishes a conclusive presumption that there was sufficient evidence to warrant the indictment and that a showing of "probable cause" is not necessary. Respondent asserts that the above rule is in full compliance with the decisions of this Court which,

in the case of *Costello v. United States*, 76 S. Ct. 406, 350 U.S. 359, 100 L. Ed. 397 (1956), held as follows:

> "An indictment is sufficient even though based entirely on hearsay. Neither the Fifth Amendment nor any other constitutional provision prescribes the kind of evidence upon which grand juries must act. If indictments were open to the challenge that there was inadequate or incompetent evidence before the grand jury, the resulting delay would be great indeed. The result of such a rule would be that before trial on the merits a defendant could always insist on a kind of preliminary trial to determine the competency and adequacy of the evidence before the grand jury." This same reasoning was followed and upheld in *Lawn v. United States*, 78 S. Ct. 311, 318, 355 U.S. 339, 349-50, 2 L. Ed. 2d 321 (1958) and *United States v. Blue*, 86, S. Ct. 1416, 384 U.S. 251, 16 L. Ed. 2d 510 (1966).

Respondent submits that the above legal proposition is still sound and adequately protects both the accused and the State and is dispositive of petitioner's allegation concerning the sufficiency of the indictment.

QUESTION PRESENTED

Whether or not an Appellate Court may allow a defendant to appear and defend in the Appellate Court a Trial Judge's ruling in defendant's favor that is appealed by the State.

STATUTES INVOLVED

The pertinent Ohio statutes are contained in Chapter 2945 of the Ohio Revised Code and are set forth in the Appendix to this brief.

ARGUMENT

Respondent submits that the Supreme Court of Ohio in *Euclid v. Heaton*, 15 Ohio St. 2d 65, interpreted Sec. 2945.68 and Sec. 2945.69 of the Ohio Revised Code and in doing so

ruled that these statutes were not exclusive and unconstitutional. Such a ruling Respondent feels is not judicial legislation but only an interpretation of legislative intent. It is the generally accepted rule in Ohio that

> "A court's function is limited to interpreting statutes, it cannot legislate," *Mehaffey v. State*, 3 O.L.A. 495, affirmed *State v. Mehaffey*, 147 N.E. 506, 112 Ohio St. 330, 147 N.E. 506, 3 O.L.A. 19 (C.A.) (1924).

In the present situation the Appellate Court stated that petitioner could appear and defend against the Respondent's bill of exceptions, which petitioner did as would be evidenced by the record. Petitioner was therefore not deprived in any way of due process.

Respondent would further submit that Sec. 2945.68 and Sec. 2945.69 of the Ohio Revised Code, as worded, do not deny the petitioner the right to appear. Respondent therefore asserts that when an ambiguity such as this appears in a statute it is within the jurisdiction of our Appellate Courts to interpret the meaning of such a statute, and to do so does not amount to judicial legislation.

QUESTION PRESENTED

Whether or not Sec. 4731.01 of the Ohio Revised Code is an unconstitutional enactment in that the Ohio State Medical Board is composed only of medical doctors and an osteopath.

STATUTES INVOLVED

The pertinent Ohio statutes are contained in Chapter 4731 of the Ohio Revised Code and are set forth in the Appendix to to this brief.

ARGUMENT

Petitioner in his brief questions the composition of the Ohio State Medical Board. Section 4731.01 of the Ohio Revised Code states that the Medical Board shall consist of eight

members, seven of whom hold the degree of doctor of medicine (M.D.) and one who holds the degre of doctor of osteopathy (D.O.).

Petitioner challenges this composition because only medical doctors and osteopaths are members of the Board. This same question has previously been presented to this Court in the case of *Hitchcock v. Collenberg*, 140 F. Supp. 894, affirmed *per curiam*, 353 U.S. 919, 1 L. Ed. 2d 718 (1957). Hitchcock, a naturopath, stated that the Maryland Medical Practice Act unfairly discriminates against naturopaths by conferring jurisdiction over them on their medical competitors." 140 F. Supp. at 900. A three judge federal court, in a very well researched opinion, decided that the Maryland Medical Practice Act was not unconstitutional; that decision was subsequently affirmed by this Court.

In the first of what was to be a long series of cases to this Court contesting the Louisiana licensing statutes, the Louisiana Supreme Court in *Louisiana State Bd. of Medical Examiners v Fife*, 162 La. 681, 111 So. 58 (1926); affirmed 274 U.S. 270, 71 L. Ed. 1324, stated that a state may, within reasonable bounds, regulate the practice of medicine, but that this did not mean that every school of medicine that may exist should be examined only on the knowledge which that particular school required, otherwise:

> "Every group of men who might get together and evolve some system, designed to restore health, would be entitled to recognition, and all that would be required of them would be evidence of good character and knowledge of such subjects as their particular school seemed to require. . . ."

Although the Ohio State Medical Board is composed of M. D.'s and a D. O., Section 4731.17 of the Ohio Revised Code requires that for the purpose of conducting examinations the Board:

> ". . . shall call to its aid any person of established reputation and known ability in the particular limited branch in which the examination is being held;"

Thus the Ohio statutes specifically provide that the State Medical Board shall be aided in the examination of a chiropractor by another chiropractor.

The Ohio State Medical Board, pursuant to Section 4731.15 of the Ohio Revised Code, supervises licensing in:

> " . . . chiropractic, naprapathy, spondylotherapy, merchanotherapy, neurotherapy, electrotherapy, hydrotherapy, suggestivetherapy, psychotherapy, magnetic healing, chiropody, Swedish movements, massage . . ."

Obviously the members of the Board who supervise licensing in so many areas of medicine must themselves have a broad general medical background. Therefore, the General Assembly has seen fit to require that the members of the Board be either M. D.'s or a D. O. in order to provide persons of a broad medical background, able to supervise licensing in all these areas.

We submit that the constitutional challenge which petitioner has raised concerning the make-up of the Ohio State Medical Board has been previously laid to rest by this Court, in favor of the State of Ohio.

CONCLUSION

The questions presented by petitioner are old and have all been thoroughly considered and answered by this Court. Petitioner has not been able to point out any conflicting decisions by this or any other court which a hearing of this case would resolve. Indeed he cannot because the previous decisions, which cover all the questions he presents, are uniformly against his position. The law of Ohio has clearly recognized chiropractic as a limited branch of medicine and has set reasonable standards for the licensing of those persons who wish to engage in such practice. The petitioner, and the others like him who are convicted of practicing chiropractic in Ohio without a license, evidently cannot meet the very minimal standards set by the State of Ohio. This Court has continually upheld standards regarding the licensing of chiropractors much

higher than those imposed by the State of Ohio. Therefore, we submit that the decisions below are correct and in line with this Court's prior decisions on these subjects. It follows that petitioner's writ for certiorari should be denied.

Respectfully submitted,

/s/ RICHARD J. RINEBOLT

Prosecuting Attorney

Hancock County, Ohio

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1971

No. 71-1087

FRANK J. REAM, *Petitioner*

v.

THE STATE OF OHIO, *Respondent*

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE THIRD APPELLATE JUDICIAL DISTRICT OF THE STATE OF OHIO

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of April, 1972, two copies of this Brief In Opposition were mailed, postage prepaid, to Frank O. Walther, 124 Booth Lane, Haverford, Pennsylvania 19041, counsel for petitioner. I further certify that all parties required to be served have been served.

/s/ RICHARD J. RINEBOLT
Prosecuting Attorney
Hancock County, Ohio
First National Bank Bldg.,
Findlay, Ohio 45840
Counsel for Respondent
State of Ohio

APPENDIX

OHIO REVISED STATUTES

Chapter 4731

Sec. 4731.01 State medical board. (GC Sec. 1262)

The governor, with the advice and consent of the senate, shall appoint a state medical board consisting of eight members who shall be physicians and surgeons licensed to practice in Ohio. Seven members of the board shall hold the degree of doctor of medicine and shall be appointed for terms of seven years. One member of the board shall hold the degree of doctor of osteopathy and shall be appointed for a term of four years.

History: GC Sec. 1262; 99 v 496, Sec. 19; 120 v 134; Sec. 1. Eff 10-1-53. Analogous to RS Sec. 4403.

Sec. 4731.09 Requirements for admission.

The state medical board shall appoint an entrance examiner who shall not be directly or indirectly connected with a medical college and who shall determine the sufficiency of the preliminary education of an applicant for admission to the examination. The minimum requirements shall be two years of collegiate work in an approved college of arts and sciences in addition to high school graduation. Provided that students already matriculated and enrolled in their professional colleges shall not be required to have the two years of college work but shall comply only with the preliminary requirements as existing and in effect at the time of their enrollment in their said colleges. In the absence of the foregoing qualifications, the entrance examiner may examine the applicant to overcome deficiences. When the entrance examiner finds the preliminary education of the applicant sufficient, he shall issue a certificate of preliminary examination upon the payment to the treasurer of the board of a fee of *ten* dollars. Such certificate shall be attested by the secretary.

The applicant must also produce a diploma from a medical institution in the United States in good standing as defined by the board at the time the diploma was issued or produce a diploma from a school or college of osteopathy in the United States in good standing at the time the diploma was issued as defined by the committee consisting of the superintendent of public instruction of the state, a member of the board who holds the degree of doctor of osteopathy, or a diploma or license approved by the board which conferred the full right to practice all branches of medicine or surgery in a foreign country.

However, a person holding a diploma approved by the board which

does not confer on him the full right to practice all branches of medicine or surgery in a foreign country may in the discretion of the board be admitted to the examination upon completion of a course of training approved by the board consisting of not less than twelve months of residency or internship in a hospital in the United States.

An applicant for a license to practice osteopathic medicine and surgery who is a licensed osteopathic physician or surgeon in this state and who is now practicing in Ohio, but who does not possess the minimum preliminary education required, shall be issued the credentials set forth in the section, provided he has been in practice in Ohio for a period of not less than five years and submits evidence, or affidavits, acceptable to the committee that he has taken postgraduate instruction, amounting in the aggregate to thirty-six weeks in a medical or osteopathic school or college or in a hospital. Credit shall be allowed such applicant for collegiate work in an approved school of arts and sciences and for hospital internship.

***History: 134 v H 545. Eff 1-7-72.**

Sec. 4731.15 Examination and registration of practitioners of limited branches of medicine or surgery. (GC Sec. 1274-1)

The medical board shall also examine and register persons desiring to practice any limited branch of medicine or surgery, and shall establish rules and regulations governing such limited practice. Such limited branches of medicine or surgery shall include chiropractic, naprapathy, spondylotheraphy, mechanotherapy, neuropathy, electrotherapy, hydrotherapy, suggestivetherapy, psychotherapy, magnetic healing, chiropody, Swedish movements, massage, and such other branches of medicine or surgery as the same are defined in section 4731.34 of the Revised Code, except midwifery and osteopathy.

HISTORY: GC Sec. 1274-1; 106 v 202. Eff 10-1-53.

Sec. 4731.16 Examination. (GC Sec. 1274-2)

The examination of all applicants shall be conducted under rules prescribed by the state medical board and at such times and places as the board may determine. Such examination shall be given in anatomy, physiology, chemistry, bacteriology, pathology, hygiene, diagnosis, and in such other subjects appropriate to the limited branches of medicine or surgery, certificate to practice which is applied for, as the board may require. Applicants for certificates to practice massage or Swedish movements shall not be examined in pathology and diagnosis.

HISTORY: GC Sec. 1274-2; 106 v 202; 111 v 12. Eff 10-1-53.

Sec. 4731.17 Aid authorized in conducting examinations. (GC Sec. 1274-3)

For the purpose of conducting examinations provided for in sections 4731.15 and 4731.16 of the Revised Code the state medical board shall call to its aid any person of established reputation and known ability

in which the examination is being held; and in the event that there is in existence a state association or society of practitioners of any such limited branch of medicine or surgery, and such association or society, except a state association or society of chiropodists, shall recommend the person to be designated for this service by the board. Any person called by the board to its aid, as provided in this section, shall receive for his services not more than ten dollars per day and his actual and necessary expense to be fixed and allowed by the board.

Sec. 4731.18 Board may dispense with examination. (GC Sec. 1274-4)

The state medical board may dispense with the examination of applicants for limited certificates to practice a limited branch of medicine or surgery upon the same reciprocal conditions with respect to such limited branches as are provided in section 4731.29 of the Revised Code with respect to physicians and surgeons generally.

HISTORY: GC Sec. 1274-4; 106 v 202 (203) Eff 10-1-53.

Sec. 4731.19 Board shall determine standing of school giving instruction. (GC Sec. 1274-5)

The state medical board shall determine the standing of the schools, colleges, institutions, or individuals giving instruction in limited branch of medicine or surgery. If there shall at any time be such schools, colleges, institutions, or individuals giving instruction in such limited branches, the applicant for such certificate shall, as a condition of admission to the examination, produce a diploma or certificate from such a school, college, institution, or individual in good standing as determined by the board, showing the completion of the required courses of instruction.

The entrance examiner of the board shall determine the sufficiency of the preliminary education of applicants for such limited certificate as is provided in section 4731.09 of the Revised Code. The board may adopt rules defining and establishing for any limited branch of medicine or surgery such preliminary educational requirements, less exacting than those prescribed by such section, as the nature of the case may require.

HISTORY: GC Sec. 1274-5; 106 v 202 (204). Eff 10-1-53.

Sec. 4731.29 Admission by indorsement. Sec. 1282, 1282-1)

When a physician or surgeon licensed by the licensing department of another state, a territory or the District of Columbia, or a diplomate of the national board of medical examiners or the national board of examiners for osteopathic physicians and surgeons wishes to remove to this state to practice his profession, the state medical board may, in its discretion, issue to him a certificate to practice medicine or surgery, osteopathic medicine and surgery, or osteopathy without requir-

ing the applicant to submit to examination, provided he meets the requirements for entrance as set forth in section 4731.09 of the Revised Code, but an applicant to practice osteopathic medicine and surgery must pass examinations in the subjects of materia media and therapeutics and the principles and practice of osteopathic medicine given by a member of the board holding the degree of doctor of osteopathy and an examination in the subject of bacteriology, preventive medicine, and hygiene given by the board as provided in section 4731.13 of the Revised Code. The fee for registration in this manner shall be fifty dollars. Application shall be made on a form prescribed by the board.

Any physician or surgeon of good moral character, holding a certificate authorizing him to practice medicine and surgery in another state, a territory, or the District of Columbia, and who is the holder of a diploma from a legally chartered medical institution in the United States, which certificate and diploma were issued to him prior to February 25, 1925, and who is also the holder of a certificate issued to him under volume 108 Ohio Laws, Part 1, page 160, section 1, and has, by authority of such certificate issued under volume 108 Ohio Laws, Part 1, page 160, section 1 practiced in this state for a period of not less than five continuous years prior to February 25, 1925, may be admitted by the board to practice medicine and surgery in this state without examination, upon making application therefor and paying the fee required in this section.

HISTORY: GC Sec. 1282, 1282-1; 99 v 499, Sec 39; 103 v 438 (439); 111 v 21; 118 v 218 (219); 120 v 134 (137), Sec. 1. Eff 10-1-53. GC Sec. 1282 analogous to RS Sec. 4403c.

Chapter 2937.

Sec. 2937.10 Hearing set in felony cases.

If the charge be a felony and there be no written plea of guilty or waiver of examination, or the court or magistrate refuses to receive such waiver, the court or magistrate, with the consent of the prosecutor and the accused, may set the matter for hearing forthwith, otherwise he shall set the matter for hearing at a fixed time in the future and shall notify both prosecutor and defendant promptly of such time of hearing.

HISTORY: 128 v 97 (106), Sec. 1. Eff. 1-1-60.

Chapter 2945

Sec. 2945.68 Application by prosecutor to file bill of exceptions. (GC Sec. 13446-2)

The prosecuting attorney or the attorney general may present a bill of exceptions in a criminal action to the court of appeals or the supreme court and apply for permission to file it with the clerk of the court for

the decision of such court upon the points presented therein. Prior thereto, he shall give reasonable notice to the judge who presided at the trial, in which such bill was taken, of his purpose to make such application. If the court of appeals or the supreme court allows the bill to be filed, the prosecuting attorney or attorney general shall, within ten days of the filing of the bill file his brief in support of such exceptions and forthwith serve a copy thereof upon the trial judge and any attorney apointed by the judge to argue the exceptions against the prosecuting attorney or the attorney general.

HISTORY: GS Sec. 13446-2; 113 v 123 (192), ch. 25, Sec. 2. Eff 10-1-53. Analogous to former GC Sec. 13682.

Sec. 2945.69 Appointment of attorney by trial judge. (GC Sec. 13446-3)

The trial judge may appoint some competent attorney to argue the bill of exceptions against the prosecuting attorney or the attorney general under section 2945-68 of the Revised Code, and such appointee shall receive for his services a fee of not more than one hundred dollars, to be fixed by the judge and paid out of the treasury of the county in which the bill was taken. Such attorney shall file his brief against the prosecuting attorney or the attorney general within ten days after service upon him of the brief in support of said precedence of other business and such cases shall be continued upon the docket of the court of appeals or the supreme court until argued and submitted.

HISTORY: GC Sec. 13446-3; 113 v 123 (192), ch. 25, Sec. 3. Eff 10-1-53. Analogous to former GC Sec. 13682.

INDICTMENT—THREE COUNTS

THE STATE OF OHIO
COURT OF COMMON PLEAS } Hancock County, ss.

Of the Term January in the year of our Lord, one thousand nine hundred and seventy.

The Jurors of the Grand Jury of said County, on their oaths, in the name and by the authority of the State of Ohio, do find and present that Frank Ream, Forest, Ohio, late of said County, on or about the 14th day of October in the year of our Lord one thousand nine hundred and sixty-nine at the County of Hancock aforesaid, did, knowingly, wilfully and unlawfully practice medicine or surgery, or any of its branches, without a certificate from the State Medical Board of the State of Ohio,

SECOND COUNT: And the Jurors of the Grand Jury aforesaid, at the time and place aforesaid, on their said oaths, in the name and by the authority of the State of Ohio, do further find and present that said Frank Ream, Forest, Ohio, late of said Hancock County, on/or about the 14th day of October in the year of our Lord, one thousand nine hundred and sixty-nine at the County of Hancock aforesaid, not being a licensee, knowingly, wilfully and unlawfully did open and conduct an office or other place for the practice of medicine or surgery, or any of its branches, without a certificate from the State Medical Board of the State of Ohio,

THIRD COUNT: And the Jurors of the Grand Jury aforesaid, at the time and place aforesaid, on their said oaths, in the name and by the authority of the State of Ohio, do further find and present that said Frank Ream, Forest, Ohio, late of said Hancock County, on or about the 14th day of October in the year of our Lord one thousand nine hundred and sixty-nine at the County of Hancock aforesaid, did knowingly, wilfully and unlawfully conduct an office in the name of some person who has a certificate to practice medicine or surgery, or any of its branches, to-wit: Gary W. Stocker, the Revised Code of Ohio, and against the peace and dignity of the State of Ohio.

ORDER QUASHING INDICTMENT

July 6, 1970

Mr. Richard J. Rinebolt
Prosecuting Attorney
First National Bank Bldg.

Mr. Frank O. Walther
Attorney at Law
130 Booth Lane
Haverford, Pa. 19041

IN RE: State vs. Ream
No. 6155 & 6162
State vs. Stocker
No. 6154 & 6163

Mr. Robert W. Scott
Attorney at Law
4301 Woodville Road
Toledo, Ohio 43616

Gentlemen:

Please be advised that the Court entered the following minutes on its docket this date:

"7/6/70—The Court having taken under advisement after argument motion to quash indictments and demur to the indictments, upon consideration, motion to quash No. 6155 & 6162 sustained, the Court being of the opinion that Hardin County No. 5010 & Court of Appeals No. 511 is a prosecution for the same offense as herein charged. 'The underlying idea, one that is deeply engrained in the Anglo-American System of Jurisprudence, is that the state with all its resources and powers should not be allowed to make repeated attempts to convict an individual for an alleged offense; it will be subjecting him to harassment, expense, etc." 35 US 184, P. 187. Demur to indictments No. 6154 & 6163 and motions, overruled. Exceptions. See Entry.."

Defense counsel to prepare entry on Ream Case; Prosecution to prepare entry on Stocker Case. Counsel will be advised of arraigment date in Stocker Case.

Very truly yours,
Joe M. Moorhead,
Judge

JMM gwsj

IN THE COURT OF APPEALS, THIRD APPELLATE JUDICIAL DISTRICT OF OHIO HANCOCK COUNTY, OHIO

STATE OF OHIO, CASE NOS. C.A. 754, 755

PLAINTIFF-APPELLANT,

vs.

FRANK J. REAM,

DEFENDANT-APPELLEE JOURNAL ENTRY

This day this matter came on to be heard on the application of the Prosecuting Attorney of Hancock County, Ohio for permission to file a Bill of Exceptions to the decision of the Common Pleas Court of Hancock County, Ohio, under the provisions of Section 2945.67 et seq. of the Ohio Revised Code, which application was originally filed September 21, 1970 and re-filed November 6, 1970.

The Court finds said application to be well taken, and hereby allows the Bill of Exceptions to be filed con-currently with the entry of this order. Further, to avoid unnecessary expense, the filing of one Bill of Exceptions in Court of Appeals Case No. 754 shall constitute the filing of the Bill of Exceptions in both Court of Appeals Cases No. 754 and 755.

It is the further order of the Court that the Clerk shall certify a copy of this entry to counsel who represented the Defendant in the trial court which shall constitute notice to the Defendant and his counsel that Defendant is entitled to participate as a party-appellee in all further proceedings under said statutory provisions.

The Clerk shall also certify a copy of this entry to the trial judge which shall constitute notice to him of his discretionary right to appoint some competent attorney to argue the

Bill of Exceptions against the Prosecuting Attorney as provided by Section 2945.69 of the Ohio Revised Code.

/s/ Ralph D. Cole, Jr.

/s/ Raymond A. Younger

/s/ J. Thomas Guernsey

Judges.

APPROVED:

/s/ Richard J. Rinebolt,

Attorney for Plaintiff-Appellant

PERMISSION TO FILE BILL OF EXCEPTIONS

This day this matter came on to be heard on the application of the Prosecuting Attorney of Hancock County, Ohio for permission to file a Bill of Exceptions to the decision of the Common Pleas Court of Hancock County, Ohio, under the provisions of Section 2945.67 et seq. of the Ohio Revised Code, which application was originally filed September 21, 1970 and re-filed November 6, 1970.

The Court finds said application to be well taken, and hereby allows the Bill of Exceptions to be filed concurrently with the entry of this order. Further, to avoid unnecessary expense, the filing of one Bill of Exceptions in Court of Appeals Case No. 754 shall constitute the filing of the Bill of Exceptions in both Court of Appeals Cases Nos. 754 and 755.

It is the further order of the Court that the Clerk shall certify a copy of this entry to counsel who represented the Defendant in the trial court which shall constitute notice to the Defendant and his counsel that Defendant is entitled to participate as a party-appellee in all further proceedings under said statutory provisions.

The Clerk shall also certify a copy of this entry to the trial Judge which shall constitute notice to him of his discretionary right to appoint some competant attorney to argue the Bill of Exceptions against the Prosecuting Attorney as provided by Section 2945.69 of the Ohio Revised Code.

/s/ Ralph D. Cole, Jr.
/s/ Raymond A. Younger
/s/ J. Thomas Guernsey
JUDGES

APPROVED:

/s/ Richard J. Rinebolt
Attorney for Plaintiff-Appellant

ORDER REVERSING JUDGMENT AND VACATING DEMURRER

IN THE COURT OF APPEALS OF THE THIRD APPELLATE JUDICIAL DISTRICT OF OHIO
HANCOCK COUNTY

(ORIGINAL HEREOF WAS FILED WITH THE CLERK OF COURTS OF HANCOCK COUNTY ON JULY 1, 1971)

STATE OF OHIO, PLAINTIFF-APPELLANT, vs. FRANK J. REAM, DEFENDANT-APPELLEE.	Case No. 754 MINUTES

TO THE CLERK:

In the above entitled action, enter the following minutes on the Court of Appeals docket as of July 1, 1971, to-wit:

MOTION OF ATTORNEY FOR COMMON PLEAS JUDGE TO DISMISS THE APPEAL OVERRULED.

FIND ERROR OF THE COMMON PLEAS COURT PREJUDICIAL TO THE STATE OF OHIO IN ITS JUDGMENT QUASHING THE INDICTMENT AND DISCHARGING THE DEFENDANT FROM PROSECUTION THEREON. JUDGMENT REVERSED AND VACATED AND CAUSE REMANDED TO THE COMMON PLEAS COURT WITH INSTRUCTIONS TO OVERRULE THE MOTION TO VACATE AND THE DEMURRER AND FOR FURTHER PROCEEDINGS AS PROVIDED BY LAW.

COSTS TO ABIDE FINAL DETERMINATION.

EXCEPTIONS SAVED.

MEMORANDUM OPINIONS FILED.

(HOFSTETTER, J., of the Eleventh Appellate Judicial District, sitting by designation in the Third Appellate Judicial District.)

/s/ J. Thomas Guernsey
/s/ Ralph D. Cole, Jr.
/s/ Edwin T. Hofstetter
Judges

MEMORANDUM OPINION

IN THE COURT OF APPEALS OF THE THIRD APPELIATE JUDICIAL DISTRICT OF OHIO, HANCOCK COUNTY

STATE OF OHIO,
PLAINTIFF-APPELLANT,
vs
FRANK J. REAM,
DEFENDANT-APPELLEE.

CASE NUMBER 754

CASE NUMBER 755

STATE OF OHIO,
PLAINTIFF-APPELLANT,
vs
FRANK J. REAM,
DEFENDANT-APPELLEE.

MEMORANDUM OPINION

Decided: July 1, 1971

RICHARD J. RINEBOLT, Prosecuting Attorney, for Appellant.

FRANK O. WALTHER and ROBERT W. SCOTT, for Appellee.

ALLAN M. DAVIS, for the Trial Judge.

GUERNSEY, J. (Presiding). Case number 754 is an appeal by the prosecuting attorney from case number 6155 in the Court of Common Pleas of Hancock County wherein the defendant was indicted on three counts in that on or about October 14, 1969, he:

1. "did, knowingly, wilfully and unlawfully practice medicine or surgery, or any of its branches, without a certificate from the State Medical Board of the State of Ohio, Contrary to section 4731.41 of the Revised Code of Ohio,"

2. "not being a licensee, knowingly, wilfully and unlawfully did open or conduct an office or other place for the practice of medicine or surgery, or any of its branch, without a certificate from the State Medical Board of the State of Ohio, Contrary to section 4731.41 of the Revised Code of Ohio," and

3. "did knowingly, wilfully and unlawfully conduct an office in the name of some person who has a certificate to practice medicine or surgery, or any of its branches, to-wit: Gary W. Stocker, Contrary to section 4731.41 of the Revised Code of Ohio."

Case number 755 is an appeal by the prosecuting attorney from case number 6162 in the same court wherein the same defendant was indicted on three identical counts, except that they were charged to have occurred on or about October 28, 1969.

In each case the defendant filed a motion to quash and set aside the indictment alleging that (1) the second and third counts are inconsistent and conviction of one would be a bar to conviction of the other, (2) if used in support of a charge of felony then the indictment is invalid by reason of the denial of the defendant of his right to a preliminary hearing with a showing of probable cause for presentment to a grand jury, and (3) that the indictment is founded upon an unconstitutional statute.

At the same time the defendant filed in each case a demurrer to the indictment alleging the R.C. 4731.41 "is unconstitutional and void, being in violation of his and their [defendant and other members of the chiropractic profession] rights to practice his and their profession, guaranteed to him and them under Article I, section 1 of the Bill of Rights of the Ohio Constitution and the Fourteenth and Fifth Amendments to the United States Constitution."

The defendant has not been arraigned on any of the counts of either of the incidents and the cases were heard by the Court of Common Pleas on the motions to quash and the demurrers thus filed.

After hearing the common pleas court found the motions to quash well taken "on the grounds that case number 5010 of the Court of Common Pleas of Hardin County and case number 511 in the Court of Appeals of the Third Appellate District are a prosecution against Defendant for the same offense as therein charged in such Indictments, presented against Defendant, . . . inasmuch as the underlying idea, one that is deeply engrained in the Anglo-American system of Jurisprudence, is that the State with all its resources and powers should not be allowed to make repeated attempts to convict an individual for an alleged offense; it will be subjecting him to harrassment, expense, etc. 355 U.S. 184, 187." Thereupon judgments were entered quashing the indictments and ordering the defendant discharged from further prosecution thereunder. It is from each of these judgments that the prosecuting attorney made his application to this Court under the provisions of R.C. 2945.67, et seq., for permission to file his bill of exceptions, which application was granted. He assigns as error that the action of the trial court in sustaining the defendant's motions to quash and set aside the indictments was not in compliance with R.C. 2941.54.

We will first, however, dispose of the matter of defendant's demurrers to the indictments. Under R.C. 2941.57 it is prescribed that the accused may demur to an indictment "(A) When the facts stated in the indictment do not constitute an offense punishable by the laws of the state; (B) When the intent is not alleged and proof thereof is necessary to make out the offense charged; (C) When it appears on the face of the indictment that the offense charged is not within the jurisdiction of the court."

Although the trial court did not specifically rule upon the demurrers of the defendant it appears that the only claim under his demurrers is that the statute under which the indictments were founded, R.C. 4731.41, is unconstitutional and void; in other words, that the facts stated in the indictments do not constitute an offense punishable by the laws of this state. In State v. Ream, case number 511 in the Court of Appeals of Hardin County, the same claim was made by the

same defendant as here and was rejected by this court on August 28, 1970, by its decision affirming Ream's conviction in the case. It is unlikely that this decision could have been known to the Common Pleas Court of Hancock County when its judgment herein was entered on August 31, 1970. The Hardin County case was thereafter appealed by defendant to the Supreme Court of Ohio and that court refused to re-view the decision of this court. It is, therefore, established in this appellate district that R. C. 4731.41 is not an unconstitutional and void enactment and, in this state of the law, defendant's demurrers could not have been sustained for that reason.

Coming then to the motions to quash it is to be observed that R.C. 1941.54 prescribes that "a motion to quash may be made when there is a defect *appareat upon the face of the record*, within the meaning of sections 2941.02 to 2941.35, inclusive, of the Revised Code, including defects in the form of the indictment and in the manner in which the offense is charged. "(Emphasis added).

As hereinbefore noted the defendant assigned three reasons for quashing the indictments. The first, inconsistency of the second and third counts, if an inconsistency at all, is not ground to quash either of such counts, does not prevent trial as to both, but would merely prevent conviction as to both. State v. Johnson, 112 Ohio App. 124, 16 0.0 2d 51. The second invalidity by reason of the lack of a preliminary hearing with a showing of probable cause for presentment to a grand jury, is not a defect within the meaning of R.C. 2941.02 to 2941.35, and, in any event, under the law of Ohio a preliminary hearing is not necessary once an indictment has been returned. State v. Minamyer, 12 Ohio St. 2d 67. The third assigned reason, that the indictments are founded on an unconstitutional statute, has been disposed of in our discussion of the demurrers.

The reason for quashing the indictments found by the court, apparently a misconceived concept of double jeopardy, was wholly outside of the proper consideration by the court on either the motions to quash or on the demurrers to the indictments. Double jeojardy is a matter of defense which may be raised only by proper and special plea following arraignment.

R.C. 2943.03, 2943.05 and 2943.06, et seq. Here there had been no arraignment, no plea of once in jeopardy, and no trial to a jury on the issue. It was wholly beyond the authority of the court on a hearing on motions to quash the indictments to quash same on a supposed reason that he was being prosecuted in Hancock County for the same offense for which he had been convicted in Hardin County. Indeed though same is not really in issue in this appeal, an indictment charging the *commitment* of an offense (or offenses) in one county could not possibly charge the same offense (or offenses) which the defendant had been found guilty of *committing* in another county. The situs of the offenses being different the offenses necessarily, had to be different.

We must thus conclude that the common pleas court committed error prejudicial to the State of Ohio in its judgments quashing the indictments and discharging the defendant from prosecution.

Judgment reversed.

Cole and Hofsetter, J., concur.
(Hofsetter, J., of the Eleventh Appellate Judicial District, sitting by designation in the Third Appellate Judicial District).

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO, *1971 TERM*
City of Columbus. *To wit: March 3, 1971*

State of Ohio,
Appellee,
vs
Frank J Ream,
Appellant.

No. 70-738
APPEAL FORM THE COURT OF APPEALS
for Hancock County

This case, here on appeal as of right from the Court of Appeals for HANCOCK County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

Is further ordered that the appelle recover from the appellant its costs herein expended; that a mandate be sent to the FINDLAY MUNICIPAL COURT to carry this judgment into execution; and that copy of this entry be certified to the Court of Appeals for HANCOCK County for entry.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly coppied from the Journal of this Court.

Witness my hand and the seal of the

Court this day of 19

Clerk

Deputy

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO, *1971 TERM*
City of Columbus. *To wit: March 3, 1971*
State of Ohio.

Appellee,
vs
Frank J Ream,
Appellant.

No. 70-738

MANDATE

To the Honorable COMMON PLEAS COURT

Within and for the County of Hancock, Ohio, Greeting:

The Supreme Court of Ohio commands you to proceed without delay to carry the following judgment in this cause into execution:

Appeal dismissed, sua sponte, no substantial constitutional question involved.

THOMAS L. STARTZMAN,
Clerk

..... 19.....

.....

..... *Deputy*

RECORD OF COSTS

Docket Fee ..... $20.00 *Paid by* Frank O. Walther

IN THE COURT OF APPEALS, THIRD APPELLATE JUDICIAL DISTRICT OF OHIO HANCOCK COUNTY, OHIO

STATE OF OHIO
PLAINTIFF-APPELLANT,

vs.

FRANK J. REAM,
DEFENDANT-APPELLEE

CASE NOS. C.A. 754. 755

JOURNAL ENTRY

The Court finds the Motion of the Attorney for the Common Pleas Judge of Hancock County, Ohio to dismiss said appeal is not well taken and the same is hereby overruled.

The Court further finds error of the Common Pleas Court of Hancock County, Ohio, prejudicial to the State of Ohio in its judgment quashing the Indictment and discharging the Defendant from prosecution thereon. Said judgment is reversed and vacated and said cause remanded to the Common Pleas Court of Hancock County, Ohio, with instructions to overrule the Motion To Vacate and the Demurrer and for further proceedings as provided by law.

Costs to abide final determination.

Exceptions saved.

/s/ J. Thomas Guernsey
/s/ Edwin T. Hofstetter
/s/ Ralph D. Cole, Jr.
Judges

IN THE COURT OF APPEALS OF THE THIRD APPELLATE JUDICIAL DISTRICT OF OHIO HANCOCK COUNTY

THE STATE OF OHIO, PLANTIFF-APPELLANT, vs FRANK J. REAM, DEFENDANT-APPELLEE,	Case No 754 MINUTES

TO THE CLERK:

In the above entitled action, enter the following minutes on the Court of Appeals docket as of August 19, 1971, to-wit:

MOTION OF APPELLANT TO CERTIFY RECORD TO SUPREME COURT FOR REVIEW AND FINAL DETERMINATION FOR ALLEGED CONFLICT WITH STATE V. JOHNSON, 112 Ohio App. 124, OVERRULED.

(MEMO: The decision in the Johnson case precludes a defendant from being charged *and found guilty* at one trial of two offenses when, if tried separately, conviction of one offense would be a bar to conviction thereafter of the other. Here, if the conviction of one offense would be a bar to conviction of the other, which we have not decided, the defendant has not at one trial been charged *and found guilty* of all such offenses. In fact, he has not been found guilty of any offense).

(HOFSETTER, J., of the Eleventh Appellate Judicial District, sitting by designation in the Third Appellate Judicial District).

/s/ Thomas Guernsey

/s/ Ralph D. Cole, Jr.

/s/ Edwin T. Hofstetter

Judges

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO, *1971 TERM*

City of Columbus. *To wit: November 26, 1971*

State of Ohio. Appellee, vs Frank J Ream,. Appellant.	*No. 71-648* MOTION FOR LEAVE TO APPEAL FROM THE COURT OF APPEALS *for HANCOCK COUNTY*

It is ordered by the Court that this motion is overruled.

COSTS:

Motion Fee, $20.00, paid by Frank D Walther.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this 9th day of December, 1971.

/s/ Thomas L. Startzman, *Clerk*

/s/ Sam F. Adkins, *Deputy*

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO,
City of Columbus.

1971 TERM
To wit: November 26, 1971

State of Ohio,
Appellee,
vs
Frank J. Ream,
Appellant.

No. 71-648
APPEAL FROM THE COURT OF APPEALS
for Hancock County

This cause, here on appeal as of right from the Court of Appeals for HANCOCK County, was heard in the manner prescribed by law, and no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that a copy of this entry be certified to the Clerk of Court of Appeals for HANCOCK County for entry.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this 4th day of December, 1971.

/s/ Thomas L. Startzman, *Clerk*
/s/ Sam F. Adkins, *Deputy*